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No. 565

In the Supreme Court of the United States

October Term, 1945.

MUSKOGEE ELECTRIC TRACTION COMPANY, A CORPORATION, *Petitioner and Appellee below,*

vs.

VICTORY INVESTMENT CORPORATION, A CORPORATION, *Respondent and Appellant below.*

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOSEPH C. STONE,
WILLIS ROTHWELL BANKER,
A. CAMP BONDS,
Solicitors for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1945.

No. .....

MUSKOGEE ELECTRIC TRACTION COMPANY, A CORPORATION, *Petitioner and Appellee below,*

vs.

VICTORY INVESTMENT CORPORATION, A CORPORATION, *Respondent and Appellant below.*

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court:

Muskogee Electric Traction Company, a corporation, prays that a Writ of Certiorari issue to review the decision of the United States Circuit Court of Appeals for the Tenth Circuit, reversing the judgment of the United States District Court for the Eastern District of Oklahoma entered October 14, 1944, denying to plaintiff Victory Investment Corporation recovery of a judgment upon certain corporate bonds issued by Muskogee Electric Traction Company under date of May 1, 1912, due May 1, 1934. The trial court held the action barred by limitations. The Circuit Court reversed.

Opinions Below.

The District Court did not write an opinion, but expressed its views in Findings of Fact and Conclusions of Law (R. 30-41). The opinion of the Circuit Court of Appeals (R. 45-50) is not yet reported.

Jurisdiction.

The opinion of the Circuit Court was filed April 25, 1945. Rehearing was denied October 1, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Does certain statistical data of doubtful meaning contained in copies of corporate trial balance sheets, mailed to the trustee under a deed of trust given to secure the payment of corporate bonds, constitute under applicable Oklahoma statutes as construed by the Oklahoma Supreme Court and by this Court, sufficient acknowledgment of the corporate indebtedness to toll the statute of limitations in a bondholder's action at law.

Statutes Involved.

Section 95, Title 12, Oklahoma Statutes 1941:

> "Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:
>
> "First: Within five years: An action upon any contract, agreement or promise in writing."

Section 101, Title 12, Oklahoma Statutes 1941:

> "In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or

claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby."

Statement.

May 1, 1912, Muskogee Electric Traction Company issued its negotiable coupon bonds totalling $600,000.00 due May 1, 1934, bearing interest at 5%. A mortgage deed of trust covering the maker's electric transportation system in the City of Muskogee, Oklahoma, and securing the bonds and interest was made to the Equitable Trust Company of New York. This deed of trust contained the following covenant on the part of the maker:

> "It will annually during the month next following the close of the fiscal year send to the trustee a statement of its operations for the preceding twelve months, which statement shall include among other things its gross income and sources thereof, its operating expenses with the respective amounts charged to the different distributive groups and cost of betterments, extensions and improvements made, and any other data which the trustee may require, and such statements shall be open to the inspection of the bondholders."

Prior to November 1, 1930, $298,000.00 of these bonds had been repurchased by the trustee under the provisions of the trust deed, leaving $302,000.00 outstanding. No principal or interest on the outstanding bonds has been paid since that date, nor any sums provided by the Traction Company for payment.

Plaintiff Victory Investment Corporation acquired bonds and coupons of the face value of $101,025.00 during the years 1942 and 1943, and on September 8, 1944, sued at law for recovery of the amounts alleged to be due thereon.

The trustee was not made a party nor foreclosure of the deed of trust sought. To avoid the bar of the five-year limitation statute plaintiff plead and relied upon certain statistical data sent by the Traction Company to the Chase National Bank, successor trustee, at irregular intervals during the years 1932 to 1940, inclusive (R. 34), the last being a copy of the company's operating report and trial balance for the month of August, 1940, but forwarded to the trustee December 1, 1940. A description of these so-called reports appears in the trial court's Findings of Fact (R. 34-35). All consisted of numerous sheets of paper, all typewritten, without signature or attestation, but each accompanied a letter of transmittal over the signature of the general manager, in which they were referred to as "Operating, Financial and Statistical Reports and Statements." The various pages were headed: "Comparative Statement of Income," "Operating Expense," etc., and disclose that they constitute a comparison of the company's bookkeeping records with the same month for the preceding year. Page 10 is headed "General Trial Balance" in which appears, among others, the following items:

"Account Number	*Designation*	*Amount*
407	Cash-Bondholders Account	$ 7,193.05
433	Matured Interest Unpaid	255,000.00
434	Matured Funded Debt Unpaid	600,000.00
434	Matured 2% Tax on Bonds	4,800.00"

At no point in the data is to be found any reference to any bonded indebtedness.

In its Conclusions of Law the trial court held (R. 38-39):

> "The rule announced by the Supreme Court of the State of Oklahoma as to what constitutes an acknowledgment under 12 O. S. A. 101, may be stated as fol-

lows: Although the acknowledgment need not be in any particular form, there must be an unqualified and direct admission of a present subsisting debt on which the party signing the admission is liable. This admission must be made by the party to be bound.

"The statement filed with the trustee banks mentioned in the foregoing conclusion does not meet the requirements of Oklahoma law for extending the time within which suit may be brought on a debt barred by the statute of limitations. * * * "

The Circuit Court reversed the decision of the trial court, holding the data forwarded to the trustee to be a sufficient acknowledgment.

Reasons for Granting Writ.

The decision of the Circuit Court of Appeals holding the action to be not barred by limitations is a decision of an important question of local law in a way probably in conflict with applicable local decisions, and probably in conflict with decisions of this, The United States Supreme Court, construing the applicable local statutes.

The Oklahoma statutes applicable were adopted from Kansas by the Oklahoma Territorial Legislature in 1893, and by the terms of the Enabling Act of June 16, 1906, became the law of the state. The construction placed upon these statutes by the court of last resort of the parent state is controlling on the adopting state, so that such construction became a part of the law of the adopting State of Oklahoma.

—*Barnes* v. *Lynch*, 9 Okl. 11, 59 Pac. 995;
United States v. *Choctaw, O. & G. R. Co.*, 3 Okl. 404, 41 Pac. 720;
Harness v. *Meyers*, 143 Okl. 147, 288 Pac. 285;
Marlin v. *Lewallen*, 48 S. Ct. 248, 276 U. S. 58, 52 L. ed. 467.

Long prior to its adoption by Oklahoma, the statute providing that limitations may be tolled by an acknowledgment in writing had received thorough consideration by both the Supreme Court of Kansas and by this Court. In 1877, the Supreme Court of Kansas, in *Hanson* v. *Towle,* 19 Kan. 273, laid down the proper rule of interpretation as follows:

> "A mere reference to the indebtedness, although consistent with its validity and implying no disposition to question such validity, or a mere suggestion of some action concerning it, is not such an acknowledgment as is contemplated by Section 24 of the code of civil procedure as sufficient to suspend the running of the statute of limitations. There must be an unqualified and direct admission of a present subsisting debt on which the party is liable, and which he is willing to pay."

Save for modification by subsequent cases through striking from the above rule the requirement that the acknowledgment must express "a willingness to pay," the rule as stated in *Hanson* v. *Towle* has remained the law in Kansas, and upon adoption of the statute by Oklahoma, became the rule therein.

Such interpretation was applied by this Court in *City of Fort Scott* v. *Hickman,* 112 U. S. 163, 28 L. ed. 636:

> "'An acknowledgment of an existing liability, debt or claim' within the meaning of the Kansas statute, implies a meeting of the minds, the right of the creditor to take what is written as an acknowledgment to him of the existence of the debt, as well as the intention of the debtor, as deduced from the contents of the writing and all the facts accompanying it, to make such acknowledgment."

It is noted that the Supreme Court of Kansas, in *Hanson* v. *Towle,* and this Court in *Fort Scott* v. *Hickman,* both cited and relied on *Bell* v. *Morrison,* 26 U. S., 1 Peters 351, wherein Justice Storey said:

"If the expressions be equivocal, vague and indeterminate, leading to no certain conclusion, but at best to probable inferences which may affect different minds in different ways, we think they ought not go to a jury as evidence of a new promise or to revive the cause of action."

Both *Hanson* v. *Towle* and *Ft. Scott* v. *Hickman* have been consistently cited and followed by the Supreme Court of Oklahoma, as correct interpretations of the applicable statutes:

Olatmanns v. *Glenn,* 78 Okl. 70, 170 Pac. 886;
American Surety Company v. *Steele,* 84 Okl. 166, 203 Pac. 1043;
Baker v. *Christy,* 172 Okl. 32, 44 P. (2d) 16;
Filtsch v. *Johnson,* 174 Okl. 132, 50 P. (2d) 138;
Noble v. *Bodovitz,* 175 Okl. 432, 52 P. (2d) 1048;
Vernon National Farm Loan Assn. v. *Helf,* 191 Okl. 292, 129 P. (2d) 845;
First National Bank of Harrah v. *Wright,* 135 P. (2d) 344.

In the *Olatmanns* case, cited in all later Oklahoma decisions, the court said:

"A memorandum, however, must express the essential elements of a contract with reasonable certainty so that it constitutes a direct and unequivocal admission of a present debt for which the party signing the admission is liable."

Taken together, the decisions hold the local law to be: To delay the operation of limitations, an acknowledgment must be clear, distinct, direct and unequivocal; it must show the intention to acknowledge the debt as presently existing and at least infer a promise to pay same, and the creditors must so understand it. If it leads to no certain conclusion, but only to inferences which may affect different minds to different conclusions, it is wholly insufficient.

It is submitted that the decision of the Circuit Court is in conflict with this rule and the decisions of the Supreme Court of Oklahoma and of this Court. The trial court, reviewing all of the evidence, held that the data submitted by the Traction Company to the trustee "does not meet the requirements of the Oklahoma law" for tolling the statute. The evidence was not before the Circuit Court, the appeal having been taken solely upon the trial court's Findings of Fact and Conclusions of Law. The Findings of Fact show that the matter submitted to the trustee consisted simply of typewritten copies of the company's monthly balance sheets, reflecting only bookkeeping entries, and were in no sense intended as legal assertions of assets or acknowledgments of liabilities. Hence, the statements were not "acknowledgments" within the rules laid down by the Oklahoma decisions, and the refusal of the Circuit Court so to hold was in direct conflict with Oklahoma law and the applicable Oklahoma decisions.

The position of petitioner in this respect finds unanimous support in the opinions of the courts of last resort of other states having identical or similar statutory provisions.

—*Weir* v. *Bauer*, 75 Utah 398, 286 Pac. 936;

Steinfeld v. *Marteny*, 40 Ariz. 116, 10 P. (2d) 367;

Wichita Sanitarium v. *Bierschback*, 136 Kan. 84, 12 P. (2d) 806;

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Benton, et al., v. *Claar, et al.*, ... Pa. ..., 178 Atl. 520;

Golden Rule Oil Co. v. *Liebst*, 153 Kan. 123, 109 P. (2d) 95.

Conclusion.

For the foregoing reasons, and for the particular reason that the decision of the Circuit Court is a departure from the established law, not only in Oklahoma but in other states having like or similar statutory provisions, and will thus disrupt and cause confusion in the orderly course of judicial decisions in all such states, affecting many and varied types of claims now thought to be barred by limitations, it is respectfully submitted that this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

JOSEPH C. STONE,
WILLIS ROTHWELL BANKER,
A. CAMP BONDS,
Solicitors for Petitioner.

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Supreme Court of the United States

(OCTOBER TERM, 1945)

MUSKOGEE ELECTRIC TRACTION COMPANY,
a corporation,
Petitioner,

VERSUS

VICTORY INVESTMENT CORPORATION,
a corporation,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BYRON LAMUN,
TOM W. GARRETT,
2801 Apco Tower,
Oklahoma City 2, Oklahoma,
Counsellors for Respondent.

November, 1945.

UTTERBACK TYPESETTING CO., 13 S. Walker, Oklahoma City 4, Okla.

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Supreme Court of the United States

(OCTOBER TERM, 1945)

No. 565

MUSKOGEE ELECTRIC TRACTION COMPANY,
a corporation,
Petitioner,

VERSUS

VICTORY INVESTMENT CORPORATION,
a corporation,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

INTRODUCTORY

This is an action by a bondholder, for a money judgment only, on 86 corporate refunding bonds, for $1,000.00 each, dated May 1, 1912, maturing May 1, 1934, and no payments were made after maturity. The original Complaint was filed December 22, 1943 (R. 5) and the Amended Complaint on September 8, 1944 (R. 4).

The petitioner pleaded the statute of limitations. Respondent contended the statute was continually tolled and extended to December 1, 1945, by written acknowledgments

of the debt contained in petitioner's financial reports, made in pursuance of the trust agreement to the trustee as agent for the bondholders, from 1932 to December 1, 1940, wherein the bonded debt was listed as a current liability, and by concurrent acknowledgments made in its annual reports to the Oklahoma Corporation Commission.

OPINION BELOW

The opinion of the Circuit Court of Appeals was in favor of the respondent, appellant therein, and is now reported in 150 Fed. (2d) 889.

RESPONSE TO PETITION

In response to the petition for writ of certiorari, we respectfully urge that the question of the statute of limitations is one of local law, controlled by the State statutes and decisions; that the decision of the Circuit Court is not in conflict with, but follows the Oklahoma law, and the petition should be denied.

STATEMENT

The agreed findings of fact approved and adopted by the trial court (R. 30 to 37), show, among others, the following facts:

The bonds were issued in the principal amount of $600,000.00 (FF. II, R. 31) secured by trust mortgage (FF. III, R. 31), and sold to the public on open market,

and at date of trial, bonds for $298,000.00 were held in the trust sinking fund and $302,000.00 were outstanding in the hands of the public (FF. V, R. 32).

The Trust Agreement provides in substance that the debtor will make annual written reports to the trustee of its operations, including "among other things" its Gross Income, sources thereof, Operating Expenses, etc., "and any other data which the trustee may require, and such statements shall be open to the inspection of the bondholders." (FF. III, R. 31, 32).

Typewritten financial statements of the debtor were forwarded to the trustee from the office of the debtor on various dates from March 5, 1932, to December 1, 1940, each containing substantially the same statements relied upon by Respondent as an acknowledgment of the debt, as follows:

On page 1, Comparative statement of Income, there is listed:

> "III Deduction from Gross Income, 220 Interest First Mortgage Bonds—$10,000.00."

On page 10, General Trial Balance, there are listed as liabilities the following:

"

Account Number	Designation	Amount
407	Cash-Bondholders Account	$ 7,193.05
433	Matured Interest Unpaid	255,000.00
434	Matured Funded Debt	600,000.00
434	Matured 2% Tax on Bonds	4,800.00"

Items 433 and 434 are again listed as "liabilities" on the General Balance Sheet.

None of these statements bear any signature, but each was forwarded with a typewritten letter on the letterhead of the Muskogee Electric Traction Company over the signature of its General Manager, each letter stating there was enclosed therewith, "Operating, Financial and Statistical Reports and Statements of the Muskogee Electric Traction Company for the" respective periods covered by each report, to and including the month of August, 1940. The last letter was dated December 1, 1940 (FF. VIII, R. 34, 35).

On April 4, 1941, petitioner filed its annual report for the year 1940, with the Corporation Commission, verified by William E. Hyde as Vice-President and R. H. Alexander as General Manager-Secretary-Treasurer, which listed under the heading "Current Liabilities" the following:

"Matured Interest, dividends and rents unpaid* $240,100.00

"Matured funded debt unpaid** $302,000.00

"*—Includes $240,100.00 matured interest in default for as long as 90 days on a principal of $600,000.00.

"**—Excludes $298,000.00 matured funded debt held by or for respondent and not cancelled.

"Under Schedule 275, headed 'Matured Funded Debt Unpaid,' appears the following:

Name of Security	Reason for Non-payment at Maturity	Date of Issue	Date of Maturity	Rate of Interest	Total Par Value Actually Outstanding at Close of Year.
1st Mortgage Bonds (FF. IX, R. 36).	Unable	5-1-12	5-1-34	5%	$302,000.00"

Respondent purchased the bonds sued on, relying upon the statements and reports above referred to as sufficient to toll the operation of the statute of limitations (FF. X, R. 37).

ARGUMENT AND AUTHORITIES

The statute of limitations is controlled by the law of the State. The decision of the Circuit Court of Appeals is based upon and in complete accord with applicable Oklahoma statutes and decisions, and the petition should be denied.

Certiorari will be exercised sparingly and only upon questions of gravity and importance. *United States* v. *Johnston,* 268 U. S. 225, 69 L. Ed. 925.

The writ will not be granted to review the evidence and discuss specific facts. *Southern Power Company* v. *North Carolina Public Service Company,* 263 U. S. 508, 44 Sup. Ct. 164, 68 L. Ed. 413. *General Talking Pictures Corporation* v. *Western Electric Company, Inc., et al.,* 304 U. S. 175, 58 Sup. Ct. 849, 82 L. Ed. 1273.

The statute of limitations is a question controlled by the law of the State. *Erie R. Co.* v. *Tompkins,* 304 U. S. 641, 58 Sup. Ct. 817, 82 L. Ed. 1188; *Guaranty Trust Company* v. *York,* 65 Sup. Ct. 1464, 89 L. Ed. 1418.

The applicable five-year statute of limitations (Sec. 95, Title 12, Okla. Stat. 1941, cited and quoted by Petitioner), is tolled by a written acknowledgment of the debt under Section 101, Title 12, O. S. 1941 (also cited and quoted by petitioner).

In Oklahoma, an acknowledgment of a debt sufficient to toll the statute of limitations under 12 O. S. 1941, Sec. 101, need not be in any particular form. *Stone* v. *Smoot, et ux.*, 191 Okla. 512, 131 Pac. (2d) 85; *Baker* v. *Christy*, 172 Okla. 32, 44 Pac. (2d) 16.

Neither the amount of the debt nor its exact nature need be definitely stated. *Stone* v. *Smoot, et ux., supra.*

All that is necessary is that the debtor manifest in a writing, signed by him, an acknowledgment of the existing debt or liability. The acknowledgment is not required to be expressly stated, but language from which it may be fairly inferred, is sufficient. *Stone* v. *Smoot, et ux., supra; Baker* v. *Christy, supra.* It need not express or infer a willingness to pay. *Baker* v. *Christy, supra.*

The cause of action is on the bonds, the acknowledgment being no part thereof, but simply starts the statute of limitations running anew. *York* v. *Long*, 186 Okla. 643, 99 Pac. (2d) 1041.

It is shown in the case at bar that each report was typewritten and enclosed with a typewritten letter, on the letterhead of the corporation, over the signature of its general manager, specifically referring to the financial statements enclosed. Where a signed statement refers to another written statement for particulars, the separate writings are to be construed together as one instrument, especially where they are a part of the same transaction. *Searles* v. *Gonzales*, 191 Calif. 426, 216 Pac. 1003, 28

A. L. R. 78; *Bayne* v. *Wiggins*, 139 U. S. 210, 11 Sup. Ct. 521, 35 L. Ed. 144; *McLendon* v. *Ebbs*, 173 N. C. 603, 92 S. E. 498; *Black* v. *Hanz*, Tex. Civ. App., 146 S. W. 309.

The cardinal rule in the interpretation of contracts is to ascertain the mutual intention of the parties at the time of the execution thereof, and to give effect to that intention. *Texas Co.* v. *Adelman*, 186 Okla. 663, 99 Pac. (2d) 874, 127 A. L. R. 945; *New York Casualty Co.* v. *Sinclair Refining Co.*, (C. C. A. 10), 108 Fed. (2d) 65. And the subsequent acts and conduct of the corporation in repeatedly submitting the financial statements scheduling the bonded indebtedness as an existing liability under the trust agreement and over a long period of years, may be considered in arriving at the intention and interpretation of the parties to the trust agreement. *D'Yarmett* v. *School District No. 27 Canadian County*, 72 Okla. 124, 179 Pac. 20; *Gladys Belle Oil Co.* v. *Clark*, 147 Okla. 211, 296 Pac. 461; *Washoma Petroleum Co.* v. *Eason Oil Co.*, 173 Okla. 430, 49 Pac. (2d) 709; *McDowell* v. *Droz*, 179 Okla. 119, 64 Pac. (2d) 1210. Applying these rules, it is clear the intention of the parties was that such financial statements should be made to the trustee in pursuance of the trust agreement, and were so made. If this were not so, why did they make the statements? The very act of compiling and submitting the reports to the trustee, recognized the continued existance of the trust agreement, and the inclusion of the bonds therein as a current liability, acknowledged the debt.

The trust aggreement, made a part of the bonds by reference (Ex. C-1, R. 14), provided such statements should be open to the inspection of the bondholders. They were submitted to the trustee, the agent of the bondholders. *First National Bank of Boston* v. *Proctor*, (C. C. A. 1), 40 Fed. (2d) 841, certiorari denied, 282 U. S. 863, 51 Sup. Ct. 36, 75 L. Ed. 764. And an acknowledgment to the agent of the creditor tolls the statute. *Olatmans* v. *Glenn*, 78 Okla. 70, 188 Pac. 886, and *Stone* v. *Smoot, supra.*

In the recent case of *First National Bank of Harrah* v. *Wright*, 192 Okla. 182, 135 Pac. (2d) 344, the Court held that the debtor's written application for a new loan, submitted to the creditor, filed with the Oklahoma Commissioners of the Land Office, scheduling the debt there sued upon as an existing liability of the applicant, was an acknowledgment of the debt, tolling the statute of limitations.

Hanson v. *Towle*, 19 Kan. 273, cited and relied on by petitioner, was expressly modified prior to the Oklahoma adoption of Kansas statutes in 1893, in *Elder* v. *Dyer*, 26 Kan. 604, decided in 1881, where the Court said:

> "* * * Our statute, to revive a debt or claim, requires only 'acknowledgment of an existing liability' on particular claim in controversy, and this acknowledgment may be in any language which the party making it desires to use. No set phrase or particular form of language is required; anything that will indicate that the party making the acknowledgment admits that he is still liable on the claim, that he is still bound for

its satisfaction, that he is still held for its liquidation and payment, is sufficient to revive the debt or claim; and there is no necessity that there should also be a promise to pay the same, either express or implied. Of course we know that an acknowledgment of an existing liability on an honest debt or claim generally raises an implied promise or contract to pay the same; but whether it does or not, is not a question to be considered in this state. The statute says nothing about an implied contract or promise, and the action, if revived at all, is not to be brought on the implied contract or promise, but only on the original liability. * * *"

The rule of the Towle case was rejected and that in the Dyer case followed by the Oklahoma Courts in *Olatmans* v. *Glenn, supra, Baker* v. *Christy, supra.* The Olatmans case does not say that the party signing must then admit liability (new promise to pay) but says that the party signing must be liable.

Neither is the decision of the Circuit Court in conflict with *Fort Scott* v. *Hickman,* 112 U. S. 163, 5 Sup. Ct. 63, 28 L. Ed. 636, cited by the petitioner, but rather is distinguished therefrom. In that case, though the circular letter relied upon listed the debt, it was not sent to the plaintiff or his agent, and the records of the City Council which scheduled the debt were not discovered by the plaintiff until after he filed suit on the debt.

CONCLUSION

We submit, periodical financial statements made by a corporate mortgagor to the trustee in pursuance of the terms of the trust agreement, and thereby, open to the inspection of bondholders, which statements repeatedly and consistently scheduled the outstanding corporate bonds as an existing, current liability, showing bond interest charged against earned income, and, similar schedules of the debt in concurrent annual reports to the Oklahoma Corporation Commission, all of which are actually examined and relied upon by the bondholder prior to his purchase of the corporate bonds sued upon, constitute an Oklahoma acknowledgment of the debt sufficient to toll the statute of limitations.

We respectfully submit the petition should be denied and the writ refused.

Respectfully submitted,

BYRON LAMUN,
TOM W. GARRETT,
2801 Apco Tower,
Oklahoma City 2, Oklahoma,
Counsellors for Respondent.

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